unreasonable delay in bringing the plaintiff to the decompression chamber at Loyang.

The defandant company relied *inter alia* on three defences which may be conveniently summarised under the following headings :—

(1) That the plaintiff knowing that diving was a risky occupation voluntarily encountered such risk i.e. *volenti non fit injuria.*
(2) That the plaintiff was guilty of contributory negligence.
(3) The doctrine of common employment.

In my opinion the plaintiff did not willingly accept the position that he was not to have a second or assistant diver. I accept his evidence that he asked Captain Doust to employ a second diver and that the latter failed to do so. It is to be observed that when the plaintiff was diving in salvage operations before 12th August 1933 he was accom panied by another diver called Basil Chai. It was because Basil Chai had met with an accident that the plaintiff had to dive without a second diver on 12th August 1953. I find that the plaintiff did not voluntarily undertake or contract to accept the risk upon himself of diving without a second diver. In my opinion the defence of *volenti non fit injuria* does not avail the defendant company as it does not apply in this case.

With regard to the defence of contributory negligence I find that the plaintiff did not eat any solid food after coming up from the last dive as alleged by the defendant company. He was hauled up by the linesman within a short space of time at his own request. At that stage, apart from the default of the defendant company in failing to provide a second diver, no one was to blame for anything that had happened. It was the failure to provide the plaintiff with a chance to avail himself of either of the two remedies which gave rise to the eventual disaster. In the case of the second remedy it is true that the plaintiff was eventually placed in the decompression chamber but that was done too late to cure him of the compressed air illness. I find as a fact that the plaintiff was not guilty of contributory negligence.

As to the doctrine of common employment there is a line of cases which has laid it down that where an employer has not provided a safe and proper system of work for his employee the employer cannot rely on the doctrine of common employment as a defence. This is clearly laid down in *Winter v. Cardiff Rural District Council*[1]. In view of my finding that the defendant company failed to provide a safe and proper system of work at the relevant period the doctrine of common employment does not in my opinion avail the defendant company as a defence.

In the result, for the reasons which I have endeavoured to indicate above, I find that the plaintiff sustained his injuries as a direct consequence of the negligence of the defendant company and that the said injuries were solely caused by the negligence of the defendant company.

I now turn to the question of damages. The plaintiff has given evidence regarding his age, previous earnings and conditions of service, while his physical condition has been described in detail by Dr. Wells, Professor Ransome and the plaintiff himself; any attempt to summarise their evidence may result in inaccuracy and as it already forms part of the record I will not try to do so. Taking all the circumstances into consideration I assess damages under the head of pain and suffering at $3,000, under the head of loss of future earnings at $20,000, and under the head of the disadvantage arising from disablement apart from loss of earning power at $10,000.

After hearing counsel on the question of special damage I award to the plaintiff the sum of $5,600 which is the amount agreed by counsel to be due to the plaintiff by way of special damage. There will be judgment accordingly for the plaintiff for the sum of $38,600.

Finally, counsel having been heard on the question of costs I make no order as to costs.

*Judgment for the plaintiff.*

Solicitors : *Hilborne & Murphy; Drew & Napier.*

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## CHOO SAI BOEY (m.w.) v. REGINA

[A. Cr. J. (Murray-Aynsley C.J.) November 26, 1954]

[Singapore — Magistrate's Appeal No. 181 of 1954]

*Liquors Revenue Ordinance (S.S. Cap. 225), ss. 69 & 83 — Forfeiture of car — Analyst's certificate — Jurisdiction of Magistrate's Court.*

This appeal arose from the decision on an inquiry under s. 83(3) of the Liquors Revenue Ordinance regarding the disposal of a motor car which was seized by a Customs Party on May 21, 1954. At about 9.10 p.m. on that day the car in question appeared on the scene and stopped at a shop at Spottiswoode Park. A male Chinese alighted from the car and went to the rear and opened the luggage boot of the car. Just then the Customs Party which lay in wait nearby came out of hiding and the male Chinese together with another Chinese who came out from the front seat of the car bolted. The Revenue Officers gave chase but failed to apprehend the persons. In the luggage boot of the car were found 14 one gallon tins of samsu. The car and samsu were seized and the seizure was reported to the Court under s. 83(3) of the Liquors Revenue Ordinance. The appellant in response to the notice inviting claims against the article seized claimed the car and she was ordered to show cause as to why an order of forfeiture should not be made in respect of the said car.

The nature of the liquid found in the car was proved by a certificate of the Government Chemist. Although the person or persons who committed the said offence had not been arrested and brought to justice the learned Magistrate found that an offence had been proved in respect of the dutiable liquor found in the luggage boot of the car and he ordered a forfeiture under s. 83(1) of the Ordinance. He also found that the prosecution had shown that an offence under the Ordinance had been committed in respect of the liquor and the car and that the car had been seized by a Revenue Officer and he therefore ordered forfeiture of the car.

The appeal was on the grounds that the learned Magistrate erred: (1) in ordering forfeiture on the strength of the general words used in the Analyst's certificate of his findings in respect of the liquor; (2) in law in holding that s. 83(1) of the Liquors Revenue Ordinance applied when there was no accused person or persons before the Court and no conviction.

Held: (1) the order must be set aside on the ground that the nature of the liquid found in the car was proved by a certificate of the analyst which was not admissible in this case; (2) the learned Magistrate had no jurisdiction to decide whether a forfeiture had taken place as s. 69 of the Liquors Revenue Ordinance merely enables a Magistrate's Court to order a forfeiture where such forfeiture arises out of an order of a Court.

MAGISTRATE'S APPEAL.

*Yusuf Jumabhoy* for the appellant.

*G. S. Hill* (Crown Counsel) for the respondent.

*Cur. Adv. Vult.*

**Murray-Aynsley C.J.** : —I think that this order must be set aside on the grounds that the nature of the liquid found in the car was proved by a certificate of the analyst. Further I do not think that the Magistrate had jurisdiction to decide whether a forfeiture had taken place. Section 69, in my opinion, merely enables a Magistrate's Court to order a forfeiture where such forfeiture arises out of an order of a Court. In my opinion the forfeiture, if any, arises out of seizure whilst being used for the purpose of carrying contraband liquor. Thereafter the question is one of title to be decided by the civil Courts if a dispute arises.

Section 218 of the English Customs Consolidated Act, 1876, on which section 69 is based, has the words "and the liability to forfeiture of any goods seized" which are omitted in the Ordinance.

Further section 226 of the Act gives Justices power to condemn goods in cases like the present one. There is no corresponding section here.

*Appeal allowed.*

Solicitors for the appellant: *Mallal & Mamazie.*

## CHOOI KAM WOH v. REGINA

[A. Cr. J. (Murray-Aynsley C.J.) November 18, 1954]

[Singapore — Magistrate's Appeal No. 119 of 1954]

*Criminal procedure — Identification by photograph — Subsequent identification.*

This appeal raises a point of importance as to the value of identification by photograph. The facts and *ratio decidendi* appear in the short judgment reported below.

[Editorial Note: While identification by photograph before arrest is acceptable in law, it has always been held that once a man has been arrested the identification should be by personal inspection. See **Lai Ah Kam & Anor. v. Rex** (1939) M.L.J. 306 and **Public Prosecutor v. Kok Heng & Ors.** (1948) M.L.J. 171].

MAGISTRATE'S APPEAL.

The appellant in person.

*G. S. Hill* (Crown Counsel) for the respondent.

**Murray-Aynsley C.J.** : — The facts in this case were rather unusual. Someone was seen by a detective taking the bicycle of the complainant. The thief was not caught. A few days later the detective was shown 200 photographs from which he picked out one of the appellant. The appellant was later arrested in Kuala Lumpur and subsequently identified by the detective more than three months after the offence. There was absolutely no other evidence against the appellant. The procedure adopted is usual and perfectly legitimate, but the effect of a subsequent identification is thereby weakened. In the circumstances I did not consider that the charge was sufficiently proved.

*Appeal allowed.*

## LIM TECK HOCK v. REGINA

[A. Cr. J. (Murray-Aynsley C.J.) November 18, 1954]

[Singapore — Magistrate's Appeal No. 100 of 1954]

*Road Traffic Ordinance, 1941 — Licence to drive "All motor cars and vehicles to 2½ tons" — Ambiguous — Motor cycle is a vehicle.*

The appellant was charged for riding a motor cycle without a licence and also for using a motor cycle whilst not covered by 3rd party insurance. In fact he had a licence to drive "Vehicles in class III (All motor cars and vehicles to 2½ tons)". On his plea of guilty he was fined and disqualified for 12 months and he appealed against sentence.

By way of revision the conviction and sentence were set aside for the reasons set out in the judgment below.

MAGISTRATE'S APPEAL.

The appellant in person.

*J. F. McWilliam* (Crown Counsel) for the respondent.

**Murray-Aynsley C.J.** : — In this case the appellant had a licence made out in the following form "Vehicles in Class III (All motor cars and vehicles to 2½ tons)". This is ambiguous. Class III in the regulations does not include motorcycles, but a motorcycle is a vehicle. The appellant naturally thought that he could drive a motorcycle. Where a licence is intended to be restrictive the restriction should be plainly indicated. By way of revision I ordered the conviction and sentence to be set aside.

*Appeal allowed.*